

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-349

JERRY HAMPTON

APPELLANT

V.

LEROY ROBERTS AND LORENE
ROBERTS

APPELLEES

Opinion Delivered December 10, 2008

APPEAL FROM THE BOONE
COUNTY CIRCUIT COURT,
[NO. CV-2006-308-3]HONORABLE JOHN PUTMAN,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Chief Judge

This appeal is from an order granting appellees a prescriptive easement to use a road over appellant's property. Appellant disputes the sufficiency of the evidence of adverse use for the statutory period. We affirm.

One asserting an easement by prescription must show by a preponderance of the evidence that his use has been adverse to the true owner and under a claim of right for the statutory period. *Gazaway v. Pugh*, 69 Ark. App. 297, 12 S.W.3d 662 (2000). The determination of whether the use of a roadway is adverse or permissive is a question of fact. *Johnson v. Jones*, 64 Ark. App. 20, 977 S.W.2d 903 (1998). Although we review equity cases de novo, we will not reverse a trial court's finding with respect to the existence of a prescriptive easement unless it is clearly erroneous. *Id.*; *Fields v. Ginger*, 54 Ark. App. 216, 925 S.W.2d 794 (1996). Where usage of a passageway over land, by permission or otherwise, continues openly for seven years after the landowner knew or should have known

that the usage is adverse to his interest, such usage ripens into an absolute right. *Fullenwider v. Kitchens*, 223 Ark. 442, 266 S.W.2d 281 (1954).

The parties are adjoining landowners of rural property. Appellant testified that he had acquired the subject property in April 2006 but that he had previously served as the caretaker. He admitted that, as caretaker, he attempted to block the road in question by posting signs and putting up a chain in 1999, but that the chain and signs had been removed by an unknown person within a week. Appellee Leroy Roberts testified that he had been using the road in question to access his property since he bought it in 1995. He also stated that he never sought or obtained permission to do so from anyone and believed that it was a public road because it was maintained by the county.

Appellant argues that the trial court's finding was deficient because the order reflected only that the statutory period had been exceeded without stating the precise duration of the adverse use. However, because appellant made no request for special findings of fact pursuant to Ark. R. Civ. P. 52(a), he cannot now argue that the trial court erred in not specifically discussing every aspect of its finding of adverse use in excess of the statutory period. See *Ingram v. Century 21 Caldwell Realty*, 52 Ark. App. 101, 915 S.W.2d 308 n. 1 (1996). This likewise bars appellant's argument that the trial court's findings were insufficient in failing to expressly identify the prior owners of the land adjoining the disputed road.

Appellant also disputes the trial court's findings regarding the length and frequency of appellees' use, asserting that appellee Leroy Roberts's testimony in this regard was not credible. However, the testimony on this matter was in direct conflict, and the trial judge as

fact-finder had a superior opportunity to assess the credibility of the witnesses. On this record, we cannot say that the trial court's finding of adverse use for the statutory period was clearly erroneous.

Affirmed.

HART and GRIFFEN, JJ., agree.